

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Jesse J. McNabb	:	
-vs-	:	
Peoples Gas Light and Coke Company	:	04-0544
	:	
Complaint as to billing/charges in	:	
Chicago, Illinois.	:	

ORDER

By the Commission:

On August 26, 2004, Jesse McNabb filed a Complaint with the Commission, in which, he alleged that Peoples Gas Light and Coke Company ("Peoples") incorrectly charged him in the amount of \$6,000 for gas service to 11411 South May Street, in Chicago.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, this matter came on for trial before a duly authorized Administrative Law Judge (an "ALJ") of the Commission at its offices in Chicago, Illinois, on November 23, 2004. Mr. McNabb testified on his behalf. Ms. Estrada, the Office Supervisor for the Gas Division Detection Area, and Mr. Krol, a field investigator with Peoples' Revenue Protection Unit, testified on behalf of Peoples. At the conclusion of that hearing, the record was marked "Heard and Taken."

Mr. McNabb filed Briefs on Exceptions on February 26, 2005. Peoples filed a Reply Brief on Exceptions on February 22, 2005, in which, Peoples pointed out that typographical errors should be changed.

The Evidence Presented

Mr. McNabb testified that he bought the house at 11411 South May Street in 1992 and then boarded it up. No one ever lived there. (Tr. 15-16). However, on cross-examination, Mr. McNabb admitted that, from approximately November of 1999 through December of 2000, electricity was being used at the premises. (Tr. 17, Complainant's Ex. A). Mr. McNabb offered as exhibits some electric bills for the premises and a citation, dated March 18, 1997, from the City of Chicago, Department of Buildings, listing various building code violations for the premises. One violation listed notes that the building was vacant at that time. (Complainant's Ex. B, p. 1).

Mr. Krol testified that he has been an investigator for Peoples for seven years. In that capacity, he has investigated hundreds of cases involving the theft of gas. (Tr. 24-25). On March 10, 2004, Mr. Krol went out to 11411 South May Street. (Tr. 24). Mr. McNabb provided him with access to the premises because a prospective tenant had phoned Peoples requesting gas service to the premises. (Tr. 20-21).

Mr. Krol examined the gas meter and the pipes going in and out of the meter. (Tr. 34-35). On the day Mr. Krol made his inspection, he noticed that the basement back wall and the gas pipes were painted a deep red color. (Tr. 33). However, the area above the inlet collar on a gas pipe was not painted. (*Id.*). This fact drew his attention to the inlet nipple, so, Mr. Krol took pictures of the meter and gas pipes at 11411 South May Street. These pictures, as well as the Gas Diversion Field Report Mr. Krol prepared, were entered into evidence. (Respondent's Exs. 2a-2c, 3). When Mr. Krol questioned Mr. McNabb about the meter, Mr. McNabb said that "downtown has all of that information." (Tr. 28-29).

Mr. Krol also observed that a rubber gasket was set on the (pipe) threads of the inlet nipple. (Tr. 37). He testified that the whole purpose of a rubber gasket is so that the gasket will adhere to the smoothness of the pipe and form a seal. Mr. Krol opined that no gas company serviceman would set a rubber gasket on the threads of the inlet nipple; to do so causes gas leaks. (Tr. 37). Mr. Krol removed the meter from the premises. (Tr. 39).

Mr. Krol explained that once a meter has been taken down, it does not line up exactly the way it was originally set on the pipes. (Tr. 35). As a result, a series of dot-like markings, or a "compression ring" appears on the inlet nipple. (Tr. 34). Also, the pipes had been painted. When the meter was replaced, it did not match up to the paint line. (Tr. 36). In his opinion, the meter had previously been taken down by someone other than a Peoples Service Department employee. (Tr. 36, 37).

Ms. Estrada testified that, in her capacity as the Office Supervisor for Peoples Gas Division Detection Unit, he has reviewed hundreds of rebillings. (Tr. 47). Ms. Estrada reviewed the rebilling for 11411 South May Street. The rebilling was for the period of time from June 2, 1993, through July 8, 2002, which is the period of time from when Mr. McNabb purchased the premises until the time when gas to the premises was cut off at the main, out in the street. (Tr. 27, 47-48).

Ms. Estrada stated that the bill issued to Mr. McNabb was based on degree-day analysis, which is, an average temperature for an average year, but based on a ten-year average. (Tr. 49, Respondent's Exhibit 4). Peoples also looks at previous gas bills to the premises to determine how much gas is typically used at the premises. (*Id.*). Using these criteria, Ms. Estrada calculated how many cubic feet of gas should have been used during the time period in question. (Tr. 53). All of Ms. Estrada's calculations were made in a computer. (Tr. 52). Using the factors cited above, Ms. Estrada determined that the amount of money owed for the gas used during the time period in question was \$6,354.27. (Respondent's Ex. 9). The method Ms. Estrada used to estimate gas usage is the one Peoples personnel always uses to estimate gas usage. (Tr. 52).

On Exceptions, Mr. McNabb presented no legal arguments. Rather, he contended that “[t]he undisputed evidence that the premises were vacant during the stated time presents, by a preponderance of the evidence, that gas was not being used.” (Complainant Brief in Support of Exceptions at 2). Mr. McNabb also argued that Mr. Krol merely speculated that someone had removed the gas meter, as Mr. Krol did not testify that he actually saw someone remove the gas meter. (*Id.*). Further, according to Mr. McNabb, the bill in question was merely an estimate, and, Peoples has no clear way of establishing what gas was actually used during the stated period. Finally, Mr. McNabb maintains that the lack of activity by Peoples employees regarding the premises shows that its personnel had no reason to believe that gas was being used, needed or stolen. (*Id.*).

Analysis and Conclusions

It is not disputed that Mr. McNabb owned the premises during the entire time from June 2, 1993, through July 8, 2002. Mr. McNabb contends that no gas was used because the house in question was vacant. However, it does not follow that no gas was used during the time period in question just because it was vacant. In fact, the electric bills that Mr. McNabb presented establish that electricity was used at the premises.

Mr. McNabb did not present evidence establishing that gas was not used at the premises during the time period in question. At best, he presented some evidence indicating that it was vacant, at times, during the time period between June 2, 1993 through July 8, 2002.

Mr. Krol testified that someone had removed the gas meter. If a gas meter is removed, a person is able to obtain gas without having it register on the gas meter. (Tr. 32). In other words, if a gas meter is removed, a person is able to obtain gas without paying for it. There is no evidence establishing that Mr. Krol’s determination that gas was stolen is incorrect.

Credible evidence established that Peoples estimated the amount of gas used at the premises based on previous gas use and degree-day analysis, which is an average temperature for an average year. There is no evidence establishing that the method he used was incorrect, or, that Ms. Estrada used incorrect information when calculating the amount of gas used at the premises at 11411 South May Street.

It is true, as Mr. McNabb points out, that Mr. Krol’s testimony established that he did not actually see someone remove the gas meter. And, the evidence presented did not establish the actual amount of gas used after the meter was removed. However, Mr. McNabb, the Complainant, had the burden to prove, by a preponderance of the evidence, that the bill he disputed is incorrect. Without more, the fact that the premises was vacant, at times, during the 10-year period in which Mr. McNabb owned it, does not establish that

the meter was not removed. This evidence also does not establish that gas was not used at the premises.

Additionally, Mr. Krol, a field investigator with Peoples' Revenue Protection Unit, presented a detailed and thorough explanation as to why he concluded that the gas meter had been removed by someone other than a Peoples employee. Mr. McNabb presented no evidence refuting or explaining Mr. Krol's testimony, or, the other evidence Mr. Krol sponsored, such as pictures of the meter in question.

Further, when a meter has been tampered with, there simply is no way to determine how much gas was used. Ms. Estrada explained how she estimated the usage, through degree-day analysis. Ms. Estrada also explained the time period for which the bill was issued, which was from the time when Mr. McNabb purchase the premises until the time at which gas to the premises was turned off. (Tr. 27, 47-48). Mr. McNabb did not present evidence refuting or explaining Ms. Estrada's testimony or the exhibits she sponsored.

Finally, any "lack of activity" by Peoples' employees at the premises does not establish that gas was not used there. At best, it establishes that, until the time when Mr. Krol came out to the premises, Mr. McNabb did not request services from Peoples that would require a Peoples employee to be at the premises.

Moreover, the Exceptions Mr. McNabb presents do not reflect the evidence. For example, Mr. McNabb proposes deleting the following sentence: "Mr. Krol opined that no gas company employee serviceman would set a rubber gasket on the threads of the inlet nipple; to do so would cause gas leaks." He said this sentence should be replaced with: "Mr. Krol testified that it is quite difficult to get the rubber gasket in the proper position." (Complainant Exceptions at 1). Yet, this testimony concerned safety, not how difficult it is to re set a meter on piping. (See, Tr. 37). Mr. McNabb's Exception, on this issue, does not accurately reflect the evidence.

In conclusion, Mr. McNabb did not present evidence establishing that the \$6,354.27 gas bill for 11411 South May Street is in error, or, that he is not the person responsible for this bill.

Findings and Ordering Paragraphs

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) Peoples Gas Light and Coke Company is a "public utility" as is defined in the Public Utilities Act;
- (2) the Commission has jurisdiction over the parties hereto and of the subject-matter;

- (3) the recitals of fact and conclusions of law in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (4) the Complaint filed by Jessie McNabb on August 4, 2004, regarding allegations of billing errors at the premises at 11411 South May Street should be dismissed, with prejudice.

IT IS THEREFORE ORDERED that the Complaint filed by Jesse McNabb on August 4, 2004, is dismissed, with prejudice.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Admin. Code Section 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 6th day of April, 2005.

(SIGNED) EDWARD C. HURLEY

Chairman